

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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U.S. UNDERWRITERS INSURANCE COMPANY,

Plaintiff,

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

-against-

16-CV-4641 (LDH) (RER)

ORION PLUMBING & HEATING CORP.,
ARKADIY BANGIYEV, JOSEPH POMILLA,
J BAYOT HOME DESIGN and ARNULFO
BAYOT,

Defendants.

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LASHANN DEARCY HALL, United States District Judge:

On July 25, 2017, United States Magistrate Judge Ramon E. Reyes, Jr. issued a report and recommendation (the “Report and Recommendation”), wherein he recommended that this Court deny Plaintiff’s motion for default judgment as to Defendant Orion Plumbing & Heating Corp. (*See R. & R.*, ECF No. 31.) Plaintiff timely filed an objection. (Pl.’s Obj., ECF No. 33.) When a timely objection has been made to any portion of a report and recommendation on a dispositive matter, the District Court reviews the report and recommendation *de novo*. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3).

In his Report and Recommendation, Judge Reyes sets forth a thoughtful discussion concerning the wisdom of entry of default judgment in a multi-defendant case against a defaulting defendant alone. (*See R. & R.* at 2.) Judge Reyes concluded that, consistent with the general practice in this regard, entry of judgment against Orion would be premature as it could result in the issuance of inconsistent declarations. (*See id.*) In its objection, Plaintiff does not identify legal authority that runs contrary to the cases relied upon by Judge Reyes. Plaintiff also makes no effort

to show that any exception to the general practice applies here. Similarly, Plaintiff fails to identify any factual basis upon which to distinguish this case from those that, like Judge Reyes, decline to enter default judgment against the defaulting defendant.

Plaintiff's only argument in objection is that this Court directed Plaintiff to move for default judgment. (*See* Pl.'s Obj. at 1.) Indeed, it did. That fact alone, however, is insufficient to provide a basis for this Court to disregard Judge Reyes' Report and Recommendation. Upon review, the Court finds no basis in law or fact that would lead it to conclude differently than Judge Reyes.

Accordingly, the Court hereby adopts Magistrate Judge Reyes's Report and Recommendation to deny Plaintiff's motion for default judgment as to Defendant Orion Plumbing & Heating Corp. as the opinion of this Court.

Dated: October 24, 2017
Brooklyn, New York

SO ORDERED:

/s/ LDH
LASHANN DEARCY HALL
United States District Judge